

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

REVISED AGENDA ITEM: 18

Date: September 2, 2009

Subject: Award Construction Contract No. C09196 for Interstate 215 Segments 1 and 2 Construction (Project)

Recommendation:* 1. Adopt the determination of the reconsideration panel (Exhibit D) and find that Skanska-Rados, a joint venture, met the Good Faith Efforts required pursuant to the Project Special Provisions and 49 CFR Part 26, Appendix A to achieve the Underutilized Disadvantaged Business Enterprise (UDBE) goal established for this Project.

2. Award Construction Contract No. C09196 to Skanska-Rados A Joint Venture for the Interstate 215 Segments 1 and 2 Construction in the amount of \$172,655,044.

Background: This item on the agenda provides for award of a new contract based on the competitive low bid process. Bids were opened for the Interstate 215 Segments 1 and 2 construction project on July 23, 2009. Interstate 215 Segments 1 and 2 are the third phase of a multi-segment widening of Interstate 215 through the City of San Bernardino. The third phase includes the reconstruction of the freeway mainline from south of Rialto Avenue to just south of Massachusetts Avenue, the addition of a carpool and general use lane in both directions as well as interchange reconfigurations at 2nd and 3rd Street, Fifth Street, Baseline Street, and the I-215/SR-259 interchange. Also included are new bridges over both the Interstate 215 Freeway and the Burlington Northern Santa Fe (BNSF) railroad tracks at Ninth Street, Baseline Street, and 16th Street, and new undercrossings at Rialto Avenue, 2nd Street and 3rd Street. The engineer's construction cost estimate is

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Approved
Board of Directors

Date: September 2, 2009

Moved: Second:

In Favor: Opposed: Abstained:

Witnessed: _____

approximately \$224 million. With supplemental items, agency furnished items and contingency, the total project is estimated at \$251 million.

SANBAG received six (6) bids from prime contractors ranging from \$154,273,064 to a high of \$192,293,160 (Exhibit A). The low bid was submitted by Skanska-Rados A Joint Venture and does not include supplemental, agency furnished, and contingency costs.

The total award amount of \$172,655,044 includes the bid items, supplemental funds, contingency funds, and funds for agency furnished materials (Exhibit B). This amount is approximately \$79 million or 31% under the Engineer's Estimate for the total cost of the project.

At the July 9, 2009 Major Projects meeting approval was given to take award of this project directly to the August Board meeting. Since this project is using Federal funding, there is great interest in executing a contract expeditiously.

Bid opening was July 23, 2009 and UDBE submittals were received by the three low bidders as required by the Contract Special Provisions for the project. The Skanska-Rados bid documents were in order except that the UDBE participating goal was not met. Contract Special Provisions Section 2-1.02 Disadvantaged Business Enterprises (UDBE) requires in part, "If you have not met the UDBE goal, complete and submit the Good Faith Efforts Documentation form with the bid showing that you made adequate good faith efforts to meeting the goal." SANBAG staff began analysis of the Good Faith Effort based on the Contract Special Provisions, the Proposal and Contract, and 49 CFR Part 26, Appendix A. Given the specialized nature of the information, it was unclear that an adequate Good Faith Effort was demonstrated. Consequently, the SANBAG DBE Consultant was contacted and agreed to review the document for verification of compliance. The DBE consultant provided a determination that six (6) of the eight (8) criteria for a Good Faith Effort were inadequate (Exhibit C). Based on this determination a letter dated August 7, 2009 was sent to the Contractor notifying him of the determination and that because the UDBE goal was not met and the Good Faith Effort was inadequate his bid would be considered nonresponsive. In addition, the Contractor was informed in this letter that per Federal Regulation 49 CFR Part 26.53(d) a Contractor must be provided an opportunity for administrative reconsideration.

A Skanska-Rados representative requested an administrative reconsideration meeting. SANBAG staff investigated the processes which other agencies and decided to use a panel, similar to Caltrans, rather than a single Official in order to assure a more comprehensive view of the document in question. Agency

representatives qualified to serve on the reconsideration panel were sought from local and state agencies and the private sector. Candidates serving on the August 24, 2009 reconsideration panel are representatives from a Civil Rights Division of the State, the Contracts Department at the County of Riverside, and a member of the private sector whose expertise is the implementation of DBE requirements. The Contractor's representatives included employees, attorneys, and their consultants who provided the outreach included in the Contractor's Good Faith Effort document or information pertaining to the same. The reconsideration meeting primarily consisted of a presentation and a question and answer session. Information presented orally and in writing clarified information contained in the Contractor's Good Faith Effort Document. All areas of the Contractor's submittal which were previously considered inadequate were discussed and the three panel members unanimously determined, after consideration of the clarified information, that the Contractor had made an adequate Good Faith Effort. The details of the meeting results are shown as Exhibit D.

Financial Impact: Item is consistent with the SANBAG Fiscal Year 09/10 Budget. TN 83810000.

Reviewed By: Approval to take this item directly to the Board was unanimously approved by the Major Projects Committee on July 9, 2009. SANBAG Counsel has reviewed and approved the draft contract as to form.

Responsible Staff: Garry Cohoe, Director of Freeway Construction